

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8415 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -

2. To be referred to the Reporter or not? -

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3. Whether Their Lordships wish to see the fair copy of the judgement? -

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge?  
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P.J. MASTER

Versus

STATE OF GUJARAT

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Appearance:

MR DC RAWAL FOR MR MR ANAND for Petitioner

MR CC BHALJA, A.G.P. for Respondents.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/08/98

ORAL JUDGEMENT

This petition has been filed for quashing the orders at Annexures I, M and N as illegal, unconstitutional, without jurisdiction, null & void and to treat the petitioner as continue in the cadre of Clerk-cum-Typist in Ahmedabad Division with effect from 8-6-1973 with the benefits of seniority, promotion and to pay other consequential benefits on that basis.

2. The petitioner was appointed on the vacant post of some other typist in the office of the Settlement Commissioner and Director of Land-Records, Ahmedabad with effect from 8-6-73 on purely temporary basis in the pay scale of Rs. 130-240 with all the allowances sanctioned by the Government from time to time subject to the condition that the appointment on purely temporary basis and if his services will not be required by the Government, he will be discharged from service without intimating him or without assigning any reason whatsoever for the same.

3. The establishment in which the petitioner was appointed was closed and the services of the petitioner were considered as surplus and hence he was transferred to Baroda at his own costs on purely temporary basis by the order dated 2-1-1976. The petitioner was appointed as a Regional Typist in place of Ms. Vanlata R. Patel in the Consolidation Branch of the Office of the Settlement Commissioner and Director of Land Records, Ahmedabad by the order dated 5-1-1977. The petitioner could not pass the departmental examination as required by the Government Notification dated 9-9-1972 of the Revenue Department within three years from 8-6-1973 i.e. the date of entry in the department till 7-6-1976. Hence increment of Rs. 278/- being admissible to him was withheld from 1-6-1976 by the order dated 7-9-1978. The petitioner passed the departmental examination as notified in the Notification dated 16-2-1978.. In the notification dated 21-4-1983 the petitioner was shown as successful candidate in the departmental examination for higher promotion and he was shown as Typist, by the Settlement Commissioner, Ahmedabad. For the first time, the office of the Superintendent, Land Record-cum-Consolidation Office, Vadodara by its letter dated 15-6-1990 after a period of about 17 years the petitioner was informed that he was being treated as having entered in the department from 1-1-76 and his salary was to be regularised with other benefits admissible to him. Against the order dated 15-6-1990 (Annexure-I) the petitioner made representations dated 25-7-90, 7-12-92 and 22-6-92. By the order dated 20-11-92 the petitioner was transferred to the office of the District Inspector, Land Records, Vadodara as a Jr. Clerk treating him as the employee of Vadodara Division on the basis of Annexure-I.

4. The respondent no. 2 filed an affidavit in reply of the petition wherein it is stated that the petitioner originally belongs to Baroda Division. The petitioner

was transferred in the same cadre by the impugned order. The cadre of the petitioner has not been changed. As the petitioner belongs to Baroda Division as per seniority list maintained with the Baroda Division, the petitioner is entitled for the promotion to the next higher post. The petitioner was temporarily appointed as the nature of the work of the office was temporary and for a limited period. The work of the migration had come to an end on 31-12-1975 his services were not required in the office. But on the Note of Dy. Collector to the higher authorities to accommodate the petitioner in any of the department, he was accommodated in the Land Records Department in the year 1976. The petitioner was given appointment in the office of the said Department of Baroda Division. The petitioner was transferred by the order dated 15-1-1977 at his own request. As per GR dated 10-11-1976 of the G.A.D. State of Gujarat, the Settlement Commissioner discharged the petitioner to place him in Baroda Division as initially he was appointed in Baroda Division. By the order dated 15-6-1990 the petitioner has been placed in the Gradation List of Baroda Division which has to be considered from 1976. The petitioner was never treated as an employee of Ahmedabad Division. His name has been placed in the Gradation List of Baroda Division and his service is regularised in Baroda Division itself and the petitioner was informed in respect thereof.

5. Heard learned Counsel for the parties. Learned Asstt. Govt. Pleader contended that the petitioner was appointed on purely temporary basis for certain purpose by the order dated 8-6-1973. His services were surplus as the migration branch has been closed. He was transferred. Therefore, he was adjusted in Baroda Division. Hence, he has no right to claim himself as an employee of Ahmedabad Division. The department was perfectly justified in treating him as an employee of Baroda Division.

6. I have given my anxious thought to the submissions made on behalf of the parties. It is true that the petitioner was appointed on purely temporary basis by the order dated 8-6-1973 vide Annexure-A. He was transferred to Baroda by the order dated 2-1-1976 only on temporary basis for the administrative reasons. According to the learned advocate for the petitioner, the petitioner worked at Baroda only for a period of 11 months. Thereafter, he was taken back in his parent department at Ahmedabad by order dated 7-9-1978. The Settlement Commissioner and the Director of Land Records, Ahmedabad has also treated him as an employee of

Ahmedabad Division from 8-6-1973 the date of entry in the department till 7-6-1976. By that order, the increment of the petitioner was withheld from 1-6-1976 as he could not pass the departmental examination within three years. Later on, the petitioner was declared as successful at Sr. No. 1 of the Notification dated 16-2-1978 according to the Sub Service Departmental Examination, of Land Records Department. In the notification dated 16-2-1978 the petitioner was also treated as an employee of the Settlement Commissioner Office, Ahmedabad. After period of about 17 years in the year 1990 the petitioner was informed by the order dated 15-6-1990 that he is the employee of Baroda Division and his seniority has been fixed in the gradation list of Baroda Division. The submission of learned Counsel for the petitioner is that the petitioner is being treated as an employee in Baroda Division since 1976. While the petitioner has joined his service in 1973 at Ahmedabad. He lost seniority of three years if he is placed at Baroda Division. He worked at Baroda only for 11 months and that was only on temporary basis. There was no prescribed time limit for treating the petitioner as an employee of Baroda Division. He remained in service throughout from the date of his appointment.

7. Considering the facts and circumstances of the case, the impugned order dated 15-6-1990 placing the petitioner and treating him as an employee of Baroda Division after service of 17 years appears to be contrary and it does not appear to be genuine at all. That order is liable to be quashed and set aside, as a result of which the petitioner will loose his seniority of three years. Had he been considered as an employee of Baroda Division from 1973 the order would have been justified. In the facts and circumstances of the case, the petitioner having been appointed in June, 1973 and continuously worked at Ahmedabad except 11 months on transfer to Baroda cannot be justified to treat him as an employee of Baroda Division.

8. The petitioner being erroneously treated as an employee of Baroda Division, orders dated 15-6-1990, 20-11-1992 and 20-11-1992 annexure - I, M and N respectively are not liable to be sustainable. Accordingly, this petition is allowed and the impugned orders at Annexure - I, M and I dated 15-6-90, 20-11-92 and 20-11-92 respectively are quashed and set aside. The respondents are directed to treat the petitioner as an employee in the category of Typist in Ahmedabad Division with effect from 8-6-1973.

9. Learned counsel for the petitioner pointed out that during pendency of this writ petition the case of promotion of the petitioner has not been considered. If such matter is pending seniority and promotion of the petitioner which were not considered during pendency of this petition, the concerned department is at liberty to consider and treat the same in accordance with law as early as possible.

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